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Financing of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994

Financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Second performance reports for the biennium 2008-2009 and proposed budgets for the biennium 2010-2011 of the International Criminal Tribunal for Rwanda and of the International Tribunal for the Former Yugoslavia

Report of the Advisory Committee on Administrative and Budgetary Questions

I. Introduction

1. The Advisory Committee on Administrative and Budgetary Questions has considered the proposed budgets for the biennium 2010-2011 of the International Criminal Tribunal for Rwanda (A/64/478) and of the International Tribunal for the Former Yugoslavia (A/64/476). It has also considered the second performance reports for the biennium 2008-2009 for the International Criminal Tribunal for Rwanda (A/64/538) and for the International Tribunal for the Former Yugoslavia (A/64/512). During its consideration of the reports, the Committee met with the representatives of both Tribunals, who provided additional information and clarification.

2. The Advisory Committee considered the financing of the Tribunals together in order to facilitate discussions on cross-cutting issues concerning both bodies.

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3. The Advisory Committee's observations on the reports of the Board of Auditors related to the Tribunals (A/63/5/Add.11 and A/63/5/Add.12) are contained in its report on the financing of the International Criminal Tribunal for Rwanda and of the International Tribunal for the Former Yugoslavia for the biennium 2008-2009 (A/63/595).

II. Cross-cutting issues

A. After-service health insurance

4. In its report on the budgets for the biennium 2008-2009 of the International Criminal Tribunal for Rwanda and of the International Tribunal for the Former Yugoslavia (A/62/578), the Advisory Committee had recommended that the proposed funding for after-service health insurance of the Tribunals be taken up in the context of the overall review of the question of after-service health insurance. That recommendation was endorsed by the General Assembly in its resolutions 62/229 and 62/230.

5. In his report on liabilities and proposed funding for after-service health insurance benefits (A/64/366), the Secretary-General proposed that the General Assembly approve funding of current and future after-service health insurance liabilities accrued as at 31 December 2008, and appropriate $29.7 million for the International Criminal Tribunal for Rwanda and $15.1 million for the International Tribunal for the Former Yugoslavia in the context of their respective budgets for the biennium 2010-2011. In its related report (A/64/7/Add.4), the Advisory Committee expressed its view that the United Nations should have a consistent approach towards the funding of those liabilities and recommended that appropriations be made to cover the cost of current after-service health insurance participants who had retired from the Tribunals. The Committee further indicated that, in view of the limited mandates of the Tribunals, the Assembly would need to address the long-term after-service health insurance liabilities of the Tribunals in the context of the final performance reports. The Assembly is to consider the Secretary-General's proposals and the Committee's related report on after-service health insurance benefits at its current session.

B. Liabilities for payment of pensions to judges and surviving spouses

6. The question of liabilities for payment of pensions to judges and surviving spouses is addressed in section II.E of the respective proposed budgets for the biennium 2010-2011 of the International Criminal Tribunal for Rwanda (A/64/476) and of the International Tribunal for the Former Yugoslavia (A/64/478). As indicated in those reports, the permanent judges of the Tribunals are eligible for retirement benefits in accordance with the conditions of service and compensation set out in various General Assembly resolutions, of which the latest is dated December 2008 (resolution 63/259). Pension benefits payable to former judges are provided for in the biennial budget of the Tribunals. On the basis of the results of an actuarial valuation of the pension scheme for judges at the Tribunals, the present value of the accrued pension liability of future benefits as at 31 December 2011 is estimated as follows:

(a) An amount of $18.4 million for the International Criminal Tribunal for Rwanda, taking into account requirements for seven former judges and nine current judges;

(b) An amount of $20.1 million for the International Tribunal for the Former Yugoslavia, taking into account requirements for 15 former judges, 1 beneficiary in receipt of pension benefits and 13 current judges.

7. The Advisory Committee notes that a one-time provision for the financing of liabilities for payment of pensions to permanent judges and surviving spouses is proposed under grants and contributions in the proposed budgets of the Tribunals for the biennium 2010-2011. The Secretary-General had submitted a similar proposal in the proposed budgets for the Tribunals for the biennium 2008-2009 (A/62/468 and A/62/374). In its resolutions 62/229 and 62/230 on the financing of the Tribunals, the General Assembly had requested the Secretary-General to include in future reports information on specific parameters of the management of the funds to be appropriated to meet future requirements for pension benefits of the judges of the Tribunals and eligible beneficiaries, and had also decided to revert to the issue of funding of the pension-related benefits of the Tribunals at its sixty-fourth session.

8. In its report on liabilities and proposed funding for after-service health insurance benefits (A/64/7/Add.4), the Advisory Committee recommended that the General Assembly address the long-term after-service health insurance liabilities of the Tribunals in the context of their respective final performance reports (see para. 5 above). It considers that a similar approach should be adopted for the funding of future liabilities of the Tribunals related to pensions of judges. **Accordingly, the Advisory Committee recommends that the General Assembly appropriate only those resources required to cover the current cost of pensions in the context of the budgets of the Tribunals for the biennium 2010-2011. The liabilities for future payments of pensions to judges and surviving spouses should be addressed in the final budget submissions and performance reports of the Tribunals.**

C. Other issues

9. From paragraph 65 of the proposed budget for the International Tribunal for the Former Yugoslavia (A/64/476), the Advisory Committee notes that discussions on the functions to be transferred to the proposed residual mechanism, the possible locations for the archives of the Tribunals and the seat of the residual mechanism are ongoing between the Tribunals, the Office of Legal Affairs of the Secretariat and the Informal Working Group on Tribunals of the Security Council. The Office of Legal Affairs, in consultation with the Tribunals, has prepared a report on the above subjects for consideration by the Council (S/2009/258).

10. Section II.D of the respective proposed budgets for the biennium 2010-2011 of the Tribunals provides details on the progress made towards the development and implementation of a common, comprehensive and coordinated strategy and project plan for archives and records management across the two Tribunals, in cooperation with the Archives and Records Management Section and the Office of Legal Affairs. **The Advisory Committee encourages the Tribunals to continue close cooperation in this regard.**

III. International Criminal Tribunal for Rwanda

A. Completion strategy and status of trial-related activities

11. By its resolution 1503 (2003), the Security Council called upon the International Criminal Tribunal for Rwanda to take all possible measures to complete investigations by the end of 2004, first instance trial activities by the end of 2008 and all of its work in 2010. As indicated in paragraph 4 of the proposed budget, the completion strategy of the International Criminal Tribunal for Rwanda rests on two pillars: (a) the fair and expeditious completion of trials at the Tribunal of those who bear the greatest responsibility for the crimes committed in 1994, in accordance with the deadlines set by the Council; and (b) the transfer of selected cases to competent national jurisdictions for trial.

12. In its latest assessment of the status of its completion strategy (S/2009/247, dated 14 May 2009) the Tribunal anticipated that ongoing drafting of judgements relating to the trials of 25 accused and the trials of at least 6 other accused persons that are yet to commence could be concluded by the end of 2010. There remain 13 fugitives at large, of which 4 are to be tried at the Tribunal because of their leadership roles during the 1994 genocide. The Advisory Committee notes that their possible arrest and transfer to the Tribunal would require a reassessment of the Tribunal's trial schedule. The Committee also notes that the Prosecutor intends to request the referral of the other 9 fugitive cases to national jurisdictions for trial. As indicated in paragraph 6 of the proposed budget, the Tribunal's programme of work for 2009 was affected by arrests of accused persons and the rejection of cases referred to national jurisdiction by the Trial Chambers, and by delays in some of the ongoing trials. Upon enquiry, the Committee was informed that the current completion strategy envisages that all trial activities would be completed by 2010, with about 5 cases projected to extend into 2011 at the judgement writing stage, and that appeals work would continue until the end of 2012.

13. The Advisory Committee was informed that these forecasts are based on the Tribunal's estimates as to the time required for the remaining trials and appeals, but that it continues to face a variety of challenges that could affect the duration of trials and the drafting of judgements. As indicated in the proposed budget, the referral of cases from the Tribunal to national jurisdictions for trial is a key pillar of the completion strategy, and the arrest of the 13 remaining fugitives remains a core element of the Tribunal's mandate. The Committee notes the measures taken to adhere to the targets of the completion strategy, as outlined in paragraphs 9 to 15 of the proposed budget, including the preparation of cases of fugitives in view of their referral to national jurisdictions; efforts to enhance cooperation in the tracking, arrest and prosecution of Tribunal indictees; ensuring the trial readiness of all evidence and witnesses; and working with the Government of Rwanda to remove legal obstacles to the transfer of cases.

14. The Tribunal proposes to retain 628 posts of the 693 posts approved for the biennium 2008-2009, with the abolition of 65 posts as of 1 January 2011 as its trial activities diminish. In view of the delay in the trial schedule, the 339 posts earmarked for abolition during 2009 were continued on the basis of funding provided through general temporary assistance. The Tribunal proposes to continue general temporary assistance funding for 93 of these 339 positions for an additional 9 months, until 30 September 2010, in order to maintain certain critical functions in

support of the ongoing trials. The current staffing of the International Criminal Tribunal for Rwanda therefore stands at a total of 1,032 positions, comprising 693 posts, plus the above-mentioned 339 general temporary assistance positions. The total number of positions would be progressively reduced during the biennium to 786 by 1 January 2010, 721 by 30 September 2010 and 628 by 1 January 2011. The Advisory Committee shares the Tribunal's concerns regarding the need to retain competent, knowledgeable and experienced staff in order to ensure the timely completion of the trials and a smooth transition to the future residual mechanism. It encourages the Tribunal to continue its efforts to retain the required staff.

B. Second performance report for the biennium 2008-2009

15. By its resolution 62/229, the General Assembly appropriated a total amount of $267,356,200 gross ($247,466,600 net) for the International Criminal Tribunal for Rwanda for the biennium 2008-2009. The approved budget was established on the basis of the trial schedule applicable at the time of the preparation of the budget for the biennium 2008-2009 and the related completion strategy of the Tribunal, under which the Tribunal anticipated phasing out the functions of 339 posts during 2009, comprising 193 posts to be abolished from 1 January 2009 and another 146 posts from 1 July 2009 (see A/63/506, para. 20). However, trial activity in 2009 remained at 2008 levels and these posts were continued through general temporary assistance funding (see para. 14 above). Subsequently, by its resolution 63/254, the Assembly approved a revised appropriation of $305,378,600 gross ($282,597,100 net) for the Tribunal for the biennium 2008-2009.

16. As shown in table 1 of the second performance report (A/64/538), the final requirements for 2008-2009 are projected at $304,538,000 gross ($279,372,600 net), reflecting a decrease of $840,600 gross ($3,224,500 net). The Advisory Committee notes that the estimate is based on actual expenditures for the first 19 months of the biennium, projected requirements for the last five months and changes in inflation and exchange rates and cost-of-living adjustments as compared with the assumptions made in the first performance report (A/63/558).

17. The reduced requirements reflect the combined effect of lower requirements under post incumbency and other charges ($3.28 million) offset in part by projected additional requirements due to changes in exchange rates, essentially the depreciation of the United States dollar against the Tanzanian shilling ($0.86 million) and the effects of inflation ($1.57 million). Details on the budgetary assumptions used for the revised and final appropriations are provided in annex I to the second performance report.

18. Concerning post incumbency, the Advisory Committee notes that the budget was established on the assumption of a vacancy rate of 15.1 per cent for the Professional category and 8.9 per cent for the General Service and related categories. As indicated in paragraphs 7 and 13 of the second performance report, actual vacancy rates for the Office of the Prosecutor and the Registry were mostly higher in 2008 and 2009. The budgeted rates for 2008-2009 and the actual average vacancy rates for 2008 and 2009 for the Office of the Prosecutor and the Registry are summarized in table 1 below. **The Advisory Committee remains concerned by the persistently high vacancy rates in the International Criminal Tribunal for Rwanda. It recommends that efforts to improve the vacancy situation be**

intensified so as to ensure that the Tribunal has adequate staffing levels to complete its mandate.

Table 1
Vacancy rates at the International Criminal Tribunal for Rwanda

	Budgeted vacancy rate	*Office of the Prosecutor*		*Registry*	
Budget parameters	*2008-2009*	*2008*	*2009[a]*	*2008*	*2009[a]*
Professional category	15.1	21.5	29.5	12.3	15.5
General Service and related categories	8.9	22.3	19.5	15.4	8.9

[a] From January to September 2009.

19. Upon enquiry, the Advisory Committee was informed that, as a staff retention incentive for the International Criminal Tribunal for Rwanda, the Office of Human Resources Management of the Secretariat had authorized payment of the full education grant entitlement after completion of one third of the school year (three months) rather than the customary two thirds, or six-month requirement. This exception is applicable to staff members whose posts are abolished and whose children continue to attend the same educational institution for the remainder of the school year. It does not apply to short-term appointees. The Committee notes the proactive efforts of the Office of Human Resources Management to address the concerns of Tribunal staff.

20. As indicated in paragraphs 7 and 13 of the proposed budget, the resources under posts reflect the combined effect of requirements for salaries and common staff costs. The Advisory Committee notes that reductions under common staff costs reflect the lower than budgeted actual rate of staff costs. In the Registry, the actual requirements for salaries were higher than the budgeted amount, despite the high vacancy rates experienced, owing to differences in actual average salaries (step in grade) as compared with the projected salary standards.

21. Upon enquiry, the Advisory Committee was informed that total appropriations for the International Criminal Tribunal for Rwanda since its inception amounted to approximately $1.3 billion. As at 31 December 2008, unpaid contributions totalled $11.6 million. A total amount of $159.6 million was assessed in 2009, of which $24.8 million remained outstanding as at 16 November 2009.

C. Proposed budget for the biennium 2010-2011

22. The estimated resource requirements for the biennium 2010-2011 amount to $244,085,700 gross ($226,618,500 net) before recosting, reflecting a reduction in resources of $61,292,900, or 20.1 per cent ($55,978,600 net, or 19.8 per cent), compared with the revised appropriation for the biennium 2008-2009 (see A/64/478, table 2 and para. 21). The total requirements proposed for the biennium 2010-2011, after recosting, amount to $257,849,900 gross ($239,988,300 net). The decreased requirements reflect the reduced trial activity in 2011 and are distributed among the different organs of the Tribunal as follows: (a) $10,487,800 under Chambers; (b) $48,170,300 under the Office of the Prosecutor; (c) $173,537,700 under the

Registry; and (d) $7,233,100 under the records management and archives component. A summary of the resource requirements by object of expenditure is provided in table 2 below.

Table 2
Resource requirements for the International Criminal Tribunal for Rwanda by object of expenditure

Object of expenditure	*2006-2007 expenditure*	*2008-2009 appropriation*	*Resource growth*		*Total before recosting*	*Recosting*	*2010-2011 estimate*
			Amount	*Percentage*			
Posts	181 141.9	174 158.9	(38 163.3)	(21.9)	135 995.6	8 281.5	144 277.1
Other staff costs	5 158.5	33 460.6	(14 971.9)	(44.7)	18 488.7	1 260.5	19 749.2
Non-staff compensation	8 546.6	10 564.6	(1 079.6)	(10.2)	9 485.0	321.0	9 806.0
Consultants and experts	649.1	1 147.6	(896.5)	(78.1)	251.1	13.1	264.2
Travel of representatives	664.8	650.2	—	—	650.2	31.6	681.8
Travel of staff	12 258.1	6 453.8	(2 979.5)	(46.2)	3 474.3	168.6	3 642.9
Contractual services	24 437.7	32 239.8	(11 197.6)	(34.7)	21 042.2	1 720.3	22 762.5
General operating expenses	10 275.0	14 740.4	(3 096.1)	(21.0)	11 644.3	1 131.1	12 775.4
Hospitality	2.9	7.2	—	—	7.2	0.7	7.9
Supplies and materials	2 488.8	3 620.0	(1 396.4)	(38.6)	2 223.6	202.4	2 426.0
Furniture and equipment	2 844.9	2 462.7	(234.5)	(9.5)	2 228.2	211.3	2 439.5
Improvement of premises	2 240.7	304.1	—	—	304.1	27.7	331.8
Grants and contributions	2 471.4	2 787.2	18 036.8	647.1	20 824.0	—	20 824.0
Staff assessment	23 252.7	22 781.5	(5 314.3)	(23.3)	17 467.2	394.4	17 861.6
Total expenditure (gross)	**276 433.0**	**305 378.6**	**(61 292.9)**	**(20.1)**	**244 085.7**	**13 764.2**	**257 849.9**
Income							
Income from staff assessment	23 252.7	22 781.5	(5 314.3)	(23.3)	17 467.2	394.4	17 861.6
Total requirements (net)	**253 180.3**	**282 597.1**	**(55 978.6)**	**(19.8)**	**226 618.5**	**13 369.8**	**239 988.3**

23. An additional amount of $1,878,700 is proposed for the International Criminal Tribunal for Rwanda in the context of the report of the Secretary-General (A/64/532) on revised estimates related to the strengthened and unified security management system for the United Nations and in that context the second phase of the new standardized access control system (known as "PACT II"). The resources would provide for the establishment of six posts (1 P-3 Information Technology Officer, 1 Local level Information Technology Assistant and 4 Local level Security Officers), general temporary assistance to provide for 1 P-4 Project Manager for the implementation of PACT II and infrastructure improvements to support the expanded system. These proposals are before the General Assembly.

24. The Advisory Committee notes that the estimate for the extrabudgetary resources for the biennium 2010-2011 amounts to $2,063,300, slightly lower than the estimate of $2,146,000 for 2008-2009. As indicated in paragraph 28 of the proposed budget, the extrabudgetary resources are utilized for the continued

implementation of various outreach and capacity-building programmes, the support programme for witnesses and the operation of the Tribunal's fourth courtroom. The Committee was informed that the continued availability of the fourth courtroom was an essential element of the completion strategy.

Posts

25. The Secretary-General proposes to reduce the overall staffing level during the biennium 2010-2011, including regular posts and general temporary assistance positions (see also para. 14 above). Table 3 of the proposed budget document (A/64/478) shows the requirements for posts, which would decrease by 65 posts (9.4 per cent) from the current authorized staffing level of 693 posts to 628 posts on 1 January 2011.

26. As shown in table 2 above, resource requirements proposed under posts amount to $135,995,600, reflecting a reduction of $38,163,300, or 21.9 per cent, as compared with the revised appropriation of $174,158,900 for 2008-2009.

Non-post resources

27. Resource requirements under other staff costs, including general temporary assistance, are estimated at $18,488,700, reflecting a decrease of $14,971,900, or 44.7 per cent, as compared with the revised appropriation for the current biennium. This amount includes a provision of $8,689,300 to cover the costs associated with the continuation for up to nine months of the functions of 93 general temporary assistance positions (2 P-5, 3 P-4, 18 P-3, 33 P-2, 21 General Service (Other level) and 16 Local level) in the Judicial Support Services Division. This arrangement would allow the Tribunal the flexibility to accelerate or decelerate the phasing out of individual positions.

28. Requirements for contractual services would decrease by $11,197,600 or 34.7 per cent, from $32,239,800 in 2008-2009 to $21,042,200 in 2010-2011. The Advisory Committee notes that the decrease is mainly attributable to reduced requirements for fees and related costs owing to reduced trial activity.

29. Upon enquiry the Advisory Committee was informed that a total amount of $815,000 is requested for off-site data backup (see para. 104 of the proposed budget) to provide for upgrading equipment and storage facilities for the maintenance of electronic records, including material that has been digitized, in accordance with internationally recognized archival standards and in view of their transfer to the residual mechanism.

30. Concerning the provision of $18,421,000 under grants and contributions to cover future liabilities for the pensions of judges, the Advisory Committee has recommended that this issue be addressed in the context of the final budget submission and performance report (see paras. 6-8 above).

D. Conclusions and recommendations

31. **The Advisory Committee recommends that the General Assembly take note of the second performance report and approve the final appropriation for the biennium 2008-2009 of $304,538,000 gross ($279,372,600 net) to the Special Account for the International Criminal Tribunal for Rwanda.**

32. **The Advisory Committee also recommends approval of the resource requirements outlined in the proposed programme budget for the biennium 2010-2011 of the International Criminal Tribunal for Rwanda, subject to its observations and recommendations in paragraph 8 above.**

IV. International Tribunal for the Former Yugoslavia

A. Completion strategy and status of trial-related activities

33. As indicated in paragraph 3 of the proposed budget (A/64/476), the completion strategy of the International Tribunal for the Former Yugoslavia for concluding all investigations by the end of 2004, all trial activities at first instance by the end of 2008 and all of its work in 2010 (S/2002/678) was endorsed in a statement made by the President of the Security Council on behalf of the Council (S/PRST/2002/21). Pursuant to Council resolution 1534 (2004), the President and Prosecutor are required to provide to the Security Council every six months an assessment of the progress made towards the implementation of the completion strategy of the Tribunal. In the last two reports on its completion strategy, the Tribunal indicated that it would not be in a position to complete all its work in 2010 as foreseen (S/2008/729 and S/2009/252). The Council noted the Tribunal's assessment of the status of its completion strategy in its resolution 1877 (2009).

34. The Advisory Committee notes that the first major milestone of the completion strategy has been met, with all investigations having been completed and the last new indictments confirmed by the Chambers at the end of 2004. The Tribunal has indicted a total of 161 persons, proceedings against 121 of those accused have been completed and 2 fugitives remain at large. The trial schedule for 2009 was revised as a result of the apprehension of two high-level accused in mid-2008 and the continuation into 2009 of some of the trials that were originally planned for completion by the end of 2008. As at October 2009, there remain 25 accused persons at the pretrial and trial stages and 13 at the appeals stage. The Committee was informed that all pretrial proceedings would be completed and all first-instance trials would start before the end of 2009. During the biennium 2010-2011, a total of 10 first-instance trials involving 25 accused persons will be ongoing. A total of 9 of these 10 first-instance trials are projected to be completed during the biennium and only one trial for one accused person is expected to remain ongoing at the end of 2011. Furthermore, it is expected that all cases on trial will be appealed and that a total of 32 accused will reach the appeal stage. During the biennium 2010-2011, the Appeals Chamber is scheduled to complete proceedings in cases involving 21 accused.

35. The Advisory Committee was informed that these forecasts are based on the Tribunal's estimates as to the length of the remaining trials and appeals, and that a number of external factors beyond the Tribunal's control could have an impact on the anticipated completion dates of trials, as reflected in the projected trial schedule. The Committee notes the measures taken, as outlined in paragraphs 8 to 12 of the proposed budget, to ensure the expeditious completion of first-instance trials, reduce the length of trials and increase the pace of trial activity, including through the simultaneous conduct of seven trials involving 28 accused persons from the beginning of 2008 to mid-2009. With respect to the two fugitives who remain at large, the

Committee notes from subparagraph 49 (b) of the proposed budget that the Secretary-General will revert to the General Assembly with a detailed request for resources, should either of the two fugitives be arrested during the biennium 2010-2011.

36. The closure of the International Tribunal for the Former Yugoslavia is to commence during the 2010-2011 biennium, with a phased reduction of 40 per cent in staffing capacity, starting in 2010. In view of the revision of the trial schedule in 2009 it was necessary to maintain the level of posts at the 2008 levels. Consequently, the 258 posts planned to be abolished in phases in 2009 (100 from 1 August and 158 from 1 November 2009) were continued, on the basis of funding provided through general temporary assistance. The current staffing of the Tribunal stands at a total of 990 positions, comprising 732 posts, plus the above-mentioned 258 general temporary assistance positions. As trial activity decreases, a total of 399 positions (including 186 posts and 213 general temporary assistance positions) are to be progressively abolished during 2010-2011, representing 40 per cent of the current staffing component of 990 positions. Upon enquiry, the Advisory Committee was provided with detailed schedules of the proposed phased abolition of posts and general temporary assistance positions during 2010-2011, including a breakdown for the Office of the Prosecutor and the Registry, which is attached in the annex to the present report. In addition to downsizing its staffing component, a realignment of resources in all the organs of the Tribunal is envisaged to reflect the shift of the focus of judicial work from investigations and first-instance trials to appeals (see para. 49 below). In this context, the Appeals Chamber will be strengthened with eight judges (four from the International Criminal Tribunal for Rwanda and four from the International Tribunal for the Former Yugoslavia). The completion of trials will also have an impact on the number of judges required. It is anticipated that a total of 14 judges will have departed before the end of 2011, including four permanent judges and 10 ad litem judges.

37. The Advisory Committee was informed that the level of resources required was directly related to trial activity and that it would be critical during the downsizing of the Tribunal to retain qualified staff and maintain adequate staffing levels, so as to ensure the expeditious completion of trials and appeals. During the biennium 2010-2011, the Tribunal will also address the question of the legacy of the Tribunal and prepare for the transition to the residual mechanism (see para. 9 above).

38. The Advisory Committee notes that referral of cases to national jurisdictions has been central to the completion strategy. While no additional transfers of dossiers are envisaged in the biennium 2010-2011, legal support will continue to be provided by the Office of the Prosecutor after the handover of the files and the Registry will continue to provide essential support to national courts. In this context, the Tribunal will be actively engaged in the transfer of know-how and in other capacity-building activities in the region of the former Yugoslavia (see paras. 14 and 15 of the budget proposal).

39. The Advisory Committee notes that in the light of the expected high number of appellate proceedings during the next biennium, the Tribunal is finalizing a legal-aid policy for appeals, based on the lump-sum payment system applied for pretrial and trial proceedings. It is expected that new appeals legal-aid policy, once implemented, will reduce the administrative burden of the Tribunal and allow defence counsel to plan their work within available resources (see para. 12 of the proposed budget and para. 52 below).

B. Second performance report for the biennium 2008-2009

40. By its resolution 62/230, the General Assembly appropriated a total amount of $347,566,900 gross ($316,472,100 net) for the International Tribunal for the Former Yugoslavia for the biennium 2008-2009. The approved budget was established on the basis of the trial schedule applicable at the time of the preparation of the budget for the biennium 2008-2009 and the related completion strategy of the Tribunal, under which the Tribunal envisaged a decrease in trial activity and the phasing out of 258 posts during the second half of 2009, including 100 posts to be abolished from 1 August 2009 and 158 posts from 1 November 2009. However, trial activity in 2009 remained at 2008 levels and these posts were continued though general temporary assistance funding (see para. 36 above). Subsequently, the General Assembly approved a revised appropriation of $376,232,900 gross ($342,067,000 net) for the Tribunal for the biennium 2008-2009 (see A/64/476, table 2).

41. As shown in table 1 of the second performance report (A/64/512), the final requirements for 2008-2009 are projected at $388,888,300 gross ($345,690,900 net), reflecting an increase of $12,655,400 gross ($3,623,900 net). The Committee notes that the estimate is based on actual expenditures for the first 19 months of the biennium, projected requirements for the last five months and changes in inflation and exchange rates and cost-of-living adjustments as compared with the assumptions made in the first performance report (A/63/559).

42. The higher requirements reflect the combined effect of projected additional requirements due to changes in exchange rates, essentially the weakening of the United States dollar against the euro ($11.2 million), and higher post incumbency and other changes ($2.2 million), offset in part by reduced requirements under cost-of-living adjustments and the effects of inflation ($0.76 million). Details on the budgetary assumptions used for the revised and final appropriations are provided in annex I to the second performance report. Concerning post incumbency, the Advisory Committee notes that the budget was established on the assumption of a vacancy rate of 9.5 per cent for the Professional category and 7.9 per cent for General Service and related categories. As indicated in paragraphs 6 and 12 of the performance report, actual vacancy rates for the Office of the Prosecutor and the Registry were consistently lower in 2008 and 2009. The budgeted rates for 2008-2009 and the actual average vacancy rates for 2008 and 2009 for the Office of the Prosecutor and the Registry are summarized in table 3 below.

Table 3
Vacancy rates at the International Tribunal for the Former Yugoslavia

	Budgeted vacancy rate	*Office of the Prosecutor*		*Registry*	
Budget parameters	*2008-2009*	*2008*	*2009[a]*	*2008*	*2009[a]*
Professional category	9.5	4.3	10.1	4.7	6.8
General Service and related categories	7.9	2.9	3.3	2.9	3.7

[a] From January to September 2009.

43. The Advisory Committee recalls General Assembly resolution 63/256, in which the Secretary-General was requested to use existing contractual frameworks

to offer contracts to staff, in line with dates of planned post reductions in accordance with the relevant prevailing trial schedules, in order to remove uncertainty with regard to future employment. **The Advisory Committee commends the efforts of the Tribunal to establish non-monetary incentives intended to retain staff until their posts are no longer required, including through the establishment of appropriate career transition policies as well as staff training and development, and ensuring that the downsizing exercise is undertaken in a fair and transparent manner (see A/62/681). The Committee trusts that these efforts will be sustained so as to ensure optimum levels of required staff as the Tribunal downsizes and moves towards closure and completion of its work.**

44. Upon enquiry, the Advisory Committee was informed that total appropriations for the International Tribunal for the Former Yugoslavia since inception amounted to approximately $1.5 billion. As at 31 December 2008, unpaid contributions totalled $14.5 million. A total amount of $188.4 million was assessed in 2009, of which $28.3 million was outstanding as at 16 November 2009.

C. Proposed budget for the biennium 2010-2011

45. The estimated resource requirements for the biennium 2010-2011 amount to $301,895,900 gross ($279,847,400 net) before recosting, reflecting a reduction in resources of $74,337,000 gross, or 19.8 per cent ($62,219,600 net, or 18.2 per cent), compared with the revised appropriation for the biennium 2008-2009 (see table 2 and para. 17 of the proposed budget). The total requirements proposed for 2010-2011, after recosting, amount to $294,311,100 gross ($272,467,100 net). The decreased requirements reflect the reduced trial activity in 2011 and are distributed among the different organs of the Tribunal as follows: (a) $12,309,100 under Chambers; (b) $56,706,900 under the Office of the Prosecutor; (c) $201,455,900 under the Registry; and (d) $3,668,200 under the records management and archives component. A summary of the resource requirements by object of expenditure is provided in table 4 below.

Table 4
Resource requirements for the International Tribunal for the Former Yugoslavia by object of expenditure

Object of expenditure	*2006-2007 expenditure*	*2008-2009 appropriation*	*Resource growth*		*Total before recosting*	*Recosting*	*2010-2011 estimate*
			Amount	*Percentage*			
Posts	177 157.8	168 443.8	(45 156.1)	(26.8)	123 287.7	(2 595.9)	120 691.8
Other staff costs	22 238.0	47 850.0	(3 565.5)	(7.8)	44 284.5	(2 018.1)	42 266.4
Non-staff compensation	12 863.1	15 916.9	(3 396.9)	(21.3)	12 520.0	(399.4)	12 120.6
Consultants and experts	801.4	877.1	(75.4)	(8.6)	801.7	(30.0)	771.7
Travel of staff	6 554.8	6 270.0	(1 932.1)	(30.8)	4 337.9	210.7	4 548.6
Contractual services	62 626.3	66 679.0	(25 365.6)	(38.0)	41 312.4	(1 468.7)	39 844.7
General operating expenses	22 252.2	29 753.6	(2 941.3)	(9.9)	26 812.3	(875.1)	25 937.2
Hospitality	10.1	16.6	—	—	16.6	(0.4)	16.2
Supplies and materials	1 579.5	2 285.3	(423.7)	(18.5)	1 861.6	(58.5)	1 803.1

Object of expenditure	*2006-2007 expenditure*	*2008-2009 appropriation*	*Resource growth*		*Total before recosting*	*Recosting*	*2010-2011 estimate*
			Amount	*Percentage*			
Furniture and equipment	4 852.3	3 634.7	556.4	15.3	4 191.1	(147.6)	4 043.5
Improvement of premises	866.1	314.9	(78.2)	(24.8)	236.7	2.7	239.4
Grants and contributions	222.6	290.4	20 171.0	6 945.9	20 461.4	—	20 461.4
Staff assessment	37 262.4	33 900.6	(12 129.6)	(35.8)	21 771.0	(204.5)	21 566.5
Total expenditures (gross)	**349 286.6**	**376 232.9**	**(74 337.0)**	**(19.8)**	**301 895.9**	**(7 584.8)**	**294 311.1**
Income							
Income from staff assessment	37 262.4	33 900.6	(12 129.6)	(35.8)	21 771.0	(204.5)	21 566.5
Other income	222.8	265.3	12.2	4.6	277.5	—	277.5
Total requirements (net)	**311 801.5**	**342 067.0**	**(62 219.6)**	**(18.2)**	**279 847.4**	**(7 380.3)**	**272 467.1**

46. The Advisory Committee notes that the estimate for extrabudgetary resources for the biennium 2010-2011 amounts to $2,086,000, down from the estimate for 2008-2009 of $3,478,900.

Posts

47. The Secretary-General proposes to reduce the overall staffing level of the International Tribunal for the Former Yugoslavia by 40 per cent during the biennium 2010-2011, including regular posts and general temporary assistance positions (see also para. 36 above). Table 3 of the proposed budget shows the requirements for posts, which would decrease by 186 posts (25.4 per cent) from a total of 732 posts in 2008-2009 to 546 posts at the end of the biennium 2010-2011. A phased abolition of the 186 posts is envisaged, including a reduction of 35 posts on 1 January 2010 and a further 151 posts on 1 January 2011.

48. As shown in table 4 above, resource requirements proposed under posts amount to $123,287,700, reflecting a reduction of $45,156,100, or 26.8 per cent, as compared with the revised appropriation of $168,443,800 for 2008-2009. The Advisory Committee notes from paragraphs 53 and 71 of the proposed budget that in order to ensure flexibility in phasing out the posts to be abolished, the Secretary-General proposes to provide funding under general temporary assistance to enable critical functions of the abolished posts to be maintained to support the trials, if necessary (see para. 50 below).

49. The Advisory Committee notes that the Registry and the Office of the Prosecutor have implemented a series of internal restructuring measures in an effort to seek efficiencies, improve coordination and better align resources to priorities. In the Office of the Prosecutor, for example, the Investigation Division and the Prosecution Division were merged at the beginning of 2008 and staff from the Prosecution Division are to be redeployed to the Appeals Division (30 Professional and 7 General Service (Other level) posts) (see para. 49 of the proposed budget). The Committee notes that the Office of the Prosecutor was able to abolish a senior post at the D-1 level at this time. A restructuring of the Registry is envisaged, aimed at enhancing its communications strategy and further developing efficiencies and

coordination between the Communications Section and the immediate Office of the Registrar (see para. 66 of the budget document). In addition, the Secretary-General proposes the following redeployments between the different organs of the Tribunal, on the basis of workload anticipated for the biennium:

(a) One D-1 post from the Prosecution Division to the Judicial Support Services Division of the Registry to accommodate the reclassification of the post of Chef de Cabinet of the President of the Tribunal, which is proposed in view of the increased amount of work and the increase in the range and nature of responsibilities of the functions of the Chef de Cabinet as the Tribunal enters into the liquidation phase;

(b) One P-5 post (made available from the above reclassification) from the Judicial Support Services Division to the Registry to accommodate the post of Chief of the immediate Office of the Registrar, whose functions would include overseeing the Archives and Records Management Unit and the two Legal Officers to be redeployed from the immediate Office of the Prosecutor (see para. 49 (c) below);

With respect to the above redeployments, the Committee is of the view that it would have been more transparent to propose: (a) the abolishment of the D-1 post in the Prosecution Division; (b) the reclassification to the D-1 level of the P-5 post in the Office of the President of the Tribunal; and (c) the establishment of a new P-5 post in the Office of the Registrar.

(c) One P-4 and one P-3 Legal Officer from the immediate Office of the Prosecutor to the immediate Office of the Registrar in support of the transition to residual functions and to provide legal advice on the completion strategy and legacy issues;

(d) One P-4 and one P-3 from the immediate Office of the Prosecutor to the Press and Information Office.

The Advisory Committee recommends approval of the Secretary-General's proposals.

Non-post resources

50. Resource requirements under other staff costs, including general temporary assistance, are estimated at $44,284,500, reflecting a decrease of $3,565,500, or 7.8 per cent, as compared with the revised appropriation for the current biennium. The Advisory Committee notes that the reductions resulting from the phased reduction of 213 general temporary assistance positions during the 2010-2011 biennium (comprising 85 Professional and 128 General Service positions) would be mostly offset by the additional requirements for general temporary assistance to cover the functions of the posts to be abolished during 2010-2011 (see para. 48 above).

51. Resources proposed under non-staff compensation in the amount of $12,520,000 would decrease by $3,396,900, owing mainly to reduced requirements for honoraria attributable to the gradual reduction of 4 permanent trial judges and 10 ad litem judges as first instance trials are completed during the biennium 2010-2011.

52. Requirements for contractual services would decrease by $25,365,600, or 38 per cent, from $66,679,000 in 2008-2009 to $41,313,400 in 2010-2011. The Advisory Committee notes that this is largely attributable to reduced requirements for fees and travel requirements of defence counsel, as a result of the reduced

number of indigent accused persons. It is estimated that an average of 33 indigent accused persons will be in trial and appellate proceedings before the Tribunal during the biennium. Defence counsel for all trials will be remunerated by way of a lump sum under the defence counsel trial legal-aid policy. A similar lump-sum payment scheme is expected be adopted for cases in appeal (see para. 39 above).

53. Concerning the provision of $20,171,000 under grants and contributions to cover future liabilities for the pensions of judges, the Advisory Committee has recommended that this issue be addressed in the context of the final budget submission and performance report (see paras. 6-8 above).

D. Conclusions and recommendations

54. **The Advisory Committee recommends that the General Assembly take note of the second performance report and approve the final appropriation for the biennium 2008-2009 of $388,888,300 gross ($345,690,900 net) to the Special Account for the International Tribunal for the Former Yugoslavia.**

55. **The Advisory Committee also recommends approval of the resource requirements outlined in the proposed programme budget for the biennium 2010-2011 of the International Tribunal for the Former Yugoslavia, subject to its observations and recommendations in paragraph 8 above.**

Annex

Proposed abolition of regular posts and general temporary assistance positions at the International Tribunal for the Former Yugoslavia

	31 December 2009	*31 December 2011*	*Reduction*	*Percentage*
Tribunal				
Posts				
Professional	347	261	86	24.8
General Service	385	285	100	26.0
Total posts	**732**	**546**	**186**	**25.4**
General temporary assistance positions				
Professional	107	22	85	79.4
General Service	151	23	128	84.8
Total general temporary assistance positions	**258**	**45**	**213**	**82.6**
All positions				
Professional	454	283	171	37.7
General Service	536	308	228	42.5
Total positions	**990**	**591**	**399**	**40.3**
Office of the Prosecutor				
Posts				
Professional	131	82	49	37.4
General Service	64	35	29	45.3
Total posts	**195**	**117**	**78**	**40.0**
General temporary assistance positions				
Professional	67	5	62	92.5
General Service	63	6	57	90.5
Total general temporary assistance positions	**130**	**11**	**119**	**91.5**
All positions				
Professional	198	87	111	56.1
General Service	127	41	86	67.7
Total positions	**325**	**128**	**197**	**60.6**
Registry				
Posts				
Professional	216	179	37	17.1
General Service	321	250	71	22.1
Total posts	**537**	**429**	**108**	**20.1**

	31 December 2009	*31 December 2011*	*Reduction*	*Percentage*
General temporary assistance positions				
Professional	40	17	23	57.5
General Service	88	17	71	80.7
Total general temporary assistance positions	**128**	**34**	**94**	**73.4**
All positions				
Professional	256	196	60	23.4
General Service	409	267	142	34.7
Total positions	**665**	**463**	**202**	**30.4**